XI-HC-22

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

(58)

आदेश पत्रक

Cr.A No. 1173/2002

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA,J.

APPELLANTS

1. Badri Yadav, aged about 42 years, son of Shri Bandhu Yadav, occupation- Agriculturist, R/o village Mahudand, P.S. Rajpur, Tahsil- Rajpur, District Surguja (CG).
2. Dablu alias Shiv Kumar, aged about 24 years, son of Shri Nanhak Yadav, Agriculturist, R/o village Mahudand, P.S. Rajpur, Tahsil Rajpur, District Surguja (CG)

Vs

RESPONDENT

State of Chhattisgarh, through : Police Station- Rajpur, Distt. Surguja (CG)

27-9-2007

Shri Rakesh Sahu, Advocate for the appellants.

Shri Neeraj Mehta, Panel Lawyer for the State.

2. This criminal appeal is directed against the judgment of conviction and order of sentence dated 20-9-2002 passed in S.T. No. 424/2001 whereby the appellants have been convicted under Sections 376(2)(g) read with Section 34 and Section 450 read with Section 34 of I.P.C. and they have been sentenced to undergo R.I. for 10 years with fine of Rs. 1,000/-, in default of payment of fine to further undergo R.I. for six months and R.I. for 7 years with fine of Rs. 1,000/-, in default of payment of fine to undergo R.I. six months. Both the sentences have been directed to run concurrently.

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3. Case of the prosecution, in brief, is that the prosecutrix aged 27 years was sleeping in her home with her child on 31-10-2001 at about 11 p.m., when appellant Badri Yadav entered in her house, overpowered her, brought her down from the cot on the ground and forcibly robbed her honour. Thereafter the appellant Dablu alias Shivkumar also entered in her house and committed rape with her. However she pushed Dablu aside and raised alarm whereupon her mother-in-law, father-in-law came from their house. Badri Yadav managed to flee from the place of incident, however Dablu was caught near grocery shop. The report of the incident was lodged by the prosecutrix on 1-11-2001 at about 12.05 noon vide Ex. P-1. During investigation, the prosecutrix was sent for medical examination to Community Health Centre, Raipur where Dr. Kiran Bhajgavari (P.W. 4) examined her and gave MLC report of Ex. P-5. Wearing apparels of the accused persons and prosecutrix were also taken into possession. Slides prepared by the doctor were taken into possession vide Ex. P-12. After completing investigation, charge sheet was filed against the accused persons in the Court of Judicial Magistrate First Class, Ambikapur.

4. During trial, 14 witnesses were examined by the prosecution, thereafter statement of the accused was recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them and pleaded innocence and false implication on the ground that Badri had lodged a report against the husband of the prosecutrix and

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because of this animosity, he has been falsely implicated whereas the defence of the appellant Deblu alias Shivkumar is that he is innocent and because of land related dispute, he has been falsely implicated. However, the learned trial Court has convicted and sentenced the appellants as mentioned above.

5. Learned counsel for the appellants submits that from perusal of the statement of the prosecutrix, it is clear that she has made material improvement in her statement. She is contradicted by the F.I.R. as also her diary statement. In para 23 of statement, she has admitted that she did not see Dablu entering in her home. She has admitted the suggestion that after Dablu entered in her home, he caught her, however she pushed him aside and thereafter he fled from there. Dr. Kiran Bhajgavri (P.W. 4) has examined the prosecutrix however no injury has been found on the private parts of the prosecutrix and she has not given any definite opinion about rape. It was further contended that the accused persons are relatives of the prosecutrix as is evident from the statement of Kismatiya Bai (P.W. 6) who has admitted that Badri is her Damad in relation whereas Dablu is nephew. Diary statement of Ram Singh was not recorded and he deposed before the Court for the first time. This fact has been admitted by this witness who has been examined as P.W. 7.

6. On the other hand, Shri Mehta, learned Panel Lawyer appearing for the State has supported the impugned judgment.

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	7. Conviction of the appellants is based on statements of the prosecutrix (P.W. 1) which is corroborated by the statement of Kismatiyabai (P.W. 6), Ram Singh (P.W. 7), Sukhdev (P.W. 8) as also the statement of Dr. Kiran Bhajgavari (P.W. 4). The prosecutrix has stated in her statement that on the date of incident, she along with her two minor children were sleeping in her home when accused Badri Yadav woke her up, brought her down from the cot and committed rape by lying her on the ground and torn her blouse. Her bangles were also broken in the said incident. He gagged her with his hand. After committing rape he went away and thereafter Dablu came and he also tried to rob her honour. He was in a drunken condition, therefore she could push him aside. Dablu started fleeing from there. Thereafter she along with her mother-in-law chased him, thereafter she raised alarm. After hearing her shouts, her mother-in-law and husband rushed there and accused Dablu was caught near the shop of Samsud. She tried to beat him however, villagers stopped her and thereafter the report was lodged in the police station. In her cross-examination she has stuck to her claim that Badri Yadav committed rape with her. She has denied the suggestion that a meeting was convened to falsely implicate Badri. In para 23 of her statement, she has admitted that she did not see Dablu entering in her house however on the same breath, she has said that she saw Dablu at the time he entered in the house. She has further admitted the suggestion that Dablu entered into the house and caught her and	

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tried to rob her honour however she pushed him aside and thereafter he fled from there.

8. P.W. 6 Kishmatiya Bai is mother-in-law of the prosecutrix. She has stated that she heard the shouts of the prosecutrix that the appellants are robbing her owner. After hearing her shouts, she went there however Badri was not there and Dablu was running away. Dablu was caught near the shop of Samsul and at that time her daughter-in-law had slapped Dablu. Similar is the statement of P.W. 7 Ramsingh, husband of the prosecutrix. P.W. 8 Sukhdev has also stated that on the date of incident at about 12.00 in the midnight, Kishmatiya Bai and Munnidevi came to his house. Prior to this, Dablu alias Shivkumar also came there. The prosecutrix started beating Dablu charging him that he has robbed her honour. Mohammad Samsul Haq (P.W. 9) has also stated that the prosecutrix came to his shop and started beating accused Dablu however he has said that she started beating because he had abused her. This witness has been declared hostile and has been cross-examined by the prosecution and confronted with his diary statement of Ex. P-10. He has denied having given such statement.

9. Thus from the statement of the above witnesses, Ramsingh, Kishmatiya Bai and Sukhdev, the version of the prosecutrix is duly corroborated. The version of the prosecutrix has also been corroborated by the version of Dr. Kiran Bhajgavari (P.W. 4) who has examined her and has found abrasion over back, left hand and right

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	hand. The trial Court relying upon the statement of the prosecutrix which is corroborated by the statement of other witnesses and also by medical evidence and further corroborated from the F.I.R. has held that the prosecution has established the offence against the appellant beyond reasonable doubt, the defence has failed to impeach the credibility of the version of the prosecutrix and other witnesses in their cross-examination and accordingly convicted and sentenced the appellants as mentioned above. 10. In the considered opinion of this Court, the finding of the trial Court is based on the evidence of the prosecutrix which inspires confidence. 11. In the result, the appeal being devoid of substance, is liable to be dismissed and it is accordingly dismissed. **Sd/-** **DHIRENDRA MISHRA** **Judge**	

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